

LABOUR DEPARTMENT

The 12th February, 1986

No. 9/6/86-6Lab./760.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of M/s, The Municipality Yamuna Nagar

IN THE COURT OF SHRI V. P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT,
AMBALA

Reference No. 80 of 1984

between

SHRI TULSI RAM, WORKMAN AND THE MANAGEMENT OF THE MESSRS THE
MUNICIPALITY, YAMUNA NAGAR

Present :

Shri Balbir Singh, for the workman.

Shri Wazir Chand, for the respondent.

AWARD

The Hon'ble Governor of Haryana in exercise of its powers conferred,—vide clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 has referred dispute between Shri Tulsi Ram, workman and the management of the Messrs Municipality, Yamuna Nagar to this Court. The terms of the reference are as under:—

Whether the termination of services of Shri Tulsi Ram, workman, is justified and in order?
If not, to what relief is he entitled to ?

Tulsi Ram, workman alleged that he was employed as a Tractor Driver on daily wages and later on his services were terminated by the respondent against the provisions of section 25 (F) of the Industrial Disputes Act, 1947. He has prayed for his re-instatement with continuity in services and with full back wages.

The management has contested the dispute contended that Shri Tulsi Ram was a daily wages labourer as a Tractor Driver. Respondent-management moved his case to Deputy Commissioner, Ambala with the request that service of Shri Tulsi Ram may be regularised but this request of the management was declined. Deputy Commissioner, Ambala, directed the respondent-management that Tractor Driver's post be filled up through Employment Exchange. A requisition was sent to Employment Exchange. Name of Shri Tulsi Ram was not sponsored for selection. So he could not be selected and his services were discontinued on appointment of a Tractor Driver through Employment Exchange. It was further contended that the respondent management filled up the post under orders of the Deputy Commissioner and no irregularity and illegality was committed

On the pleadings of the parties the following issues were framed:

Issues.

1 Whether the termination of services of Shri Tulsi Ram as per reference is legal, if not, its effect ? OPM

1-A Whether the reference is bad for non-joinder and mis-joinder of necessary parties ? OPM

2. Relief.

Issue No. 1

Management in support of its case examined Shri Surinder Singh, Executive Officer, Municipal Committee, Yamuna Nagar, who supported the case of the respondent-management; as narrated above.

Similarly when Shri Tulsi Ram appeared in the witness box he supported his case.

Shri Tulsī Ram has tried to build up a new case while saying that initially he was employed as a Sory man in Malaria Branch of Municipal Committee, later on he was appointed as Tractor Driver. But this plea of workman does not figure in his claim statement, so such a plea which is against the pleadings is not tenable because there is a settled law on this point. When the pleadings are at variance with evidence in such with circumstances such evidence has to be discarded.

The workman also made wrong statement that his name was sponsored by Employment Exchange but EX-M-3 which is a list of candidates who were sponsored by the Employment Exchange for their interview for the post of Tractor Driver does not support his claim.

In other words name of Shri Tulsī Ram does not figure in the list of candidates which was sent by Employment Officer, Yumuna Nagar to Administrator Municipal Committee, Yumuna Nagar.

MW-1 as well as AW-1 both have stated that when service of Shri Tulsī Ram were discontinued no notice was issued to him, no pay in lieu of notice period was paid to him. No retrenchment compensation was paid to Shri Tulsī Ram. It was also by stated by both parties that workman was employed on daily wages.

In view of my above discussions I am of the opinion that in the case in hand first of all name of Shri Tulsī Ram was not sponsored by the Employment Exchange for the post of Tractor Driver. Secondly, the qualification of a Tractor Driver is Matric when Shri Tulsī Ram admitted that his qualification is only primary and not Matric, so he was not eligible for the post of Tractor Driver.

No doubt in the case in hand there is a violation of section 25 (F) of the Industrial Disputes Act, 1947, regarding non-issue of notice or non-payment of pay in lieu of notice period and also about non payment of retrenchment compensation. So this amount, namely, pay in lieu of notice period, retrenchment compensation allowance be paid to the workman.

The workman is not entitled to relief of his re-instatement with continuity in service and with full back wages. Because first of all his name was not recommended by the Employment Exchange for the post of Tractor Driver and secondly, he does not fulfil qualification of a Tractor Driver which have been prescribed by the Local Self Govt. of Haryana.

Accordingly issue No. 1 is partly decided against the workman and partly in his favour.

Issue No. 1—A

In this case Deputy Commissioner, Ambala, was a necessary party he was not unpleaded party to this litigation, so the demand notice is bad in law. This issue is decided in favour of management against the workman.

Issue No. 2—Relief

For the foregoing reasons on the basis of my findings on Issue No.1 workman is entitled to wages in lieu of notice period as well as retrenchment compensation allowance. So, I pass my award regarding the dispute in hand accordingly.

V. P. CHAUDHARY,

Dated the 12th December, 1985.

Presiding Officer,
Labour Court, Ambala.

Endst. No. 3306, dated the 31st December, 1985

Forwarded (four copies), to the Financial Commissioner and Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.